

SUMMARY OF ISSUES

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1. SMITH AND WESSON 4006TSW

Beginning in 1987, the California Highway Patrol (CHP) initiated studies of 9mm and 10mm semiautomatic pistols (Annex 3). At that time most law enforcement agencies were utilizing revolvers as service weapons. After soliciting participation, the manufacturers considered during the study were Beretta, Glock, Colt, Heckler-Koch, Sig-Sauer and Smith and Wesson (S&W). The objective of the evaluation was to determine which weapon system was best suited for the diversity of duty assignments and uniformed personnel within the Department. The evaluation considered the comments of 153 participants and 18 instructors, some of whom were assigned a 9mm or 10mm pistol from one of the above manufacturers. Rating criteria involved firing range questionnaires, on-duty use questionnaires, weapon comparison questionnaires, jam/misfire rate measurements, and literature review. The study concluded in 1990 with a recommendation to purchase the S&W 4006.

From 1990 through 2005, the S&W 4006 proved to be a highly reliable pistol, due in part to the fact CHP weapons are refurbished continually throughout their life cycle by CHP personnel as part of an annual inspection process. In 2005 it came to the attention of the Department's Academy Weapons Training Unit (WTU) that the number of repairs needed for the S&W 4006 pistols had been increasing. The WTU initiated an analysis of the repairs to determine the cause and impact upon officer safety. The WTU notified departmental management who asked that they determine the cause of the increased repairs and provide a recommendation for a replacement weapon should it be determined necessary.

The WTU found the most common repairs needed by the pistols were excessive wear; specifically, worn recoil springs, extractor problems, cracked barrels, cracked frames, and cracked slides. Obviously, the increase in wear was of concern due to the potential negative impact toward officer safety and survival. The fact that the pistols were nearing or had exceeded the manufacturers expected service life was determined to be the causative factor for the increased repairs. Although a weapon may be refurbished for use beyond the recommended service life, neither the manufacturer nor the Department recommended doing so when the weapon is utilized for law enforcement or military purposes.

Once it had been determined the S&W 4006 had reached or would soon reach the end of the expected service life, WTU considered whether to recommend purchase of the current version of the same weapon system or to recommend purchase of a different weapon system. The WTU evaluated the four most common manufacturers of pistols used by law enforcement and the military to determine if there was a pistol which would better meet the needs of the Department. The evaluation was based on the expert knowledge of Academy gunsmiths and WTU staff, coupled with an examination of pistols and information available via the internet. The

evaluation did not constitute a study as undertaken in 1987, but an evaluation of features and functions of other weapons, as compared to the S&W 4006, to determine if any of them were better suited for the needs of the Department. If one or more of the pistols evaluated had met the needs of the Department as well or better than the current weapon system, the WTU would have conducted a formal test and evaluation of all manufacturers. It was determined that none of the manufacturers produced a pistol better suited to meet the needs of the Department than the current weapon system. Therefore, a costly and time consuming formal test and evaluation was not necessary. The WTU recommended the purchase of the most current version of the current weapon system, the S&W 4006TSW. The S&W 4006TSW, an updated version of the S&W 4006, had already been tested and evaluated by the Department, and is currently issued to the Department's Special Weapons and Tactics team.

In determining if a different weapon system would better meet the needs of the Department, officer safety was the only consideration. All factors considered related to increasing an officer's ability to survive a deadly force encounter. As part of the evaluation the WTU considered if the features and function of the pistols examined increased officer safety and therefore justified the costs and risks incurred with retraining the entire Department on a different weapon. It has been demonstrated that the development of muscle memory is essential to the proficient operation of a firearm during a stressful situation. As such, the Department's firearms training program is based on developing positive muscle memory by performing all training as if the officer were in an actual deadly force encounter. Studies have shown that under stress officers perform in the manner they train. This fact was demonstrated in a catastrophic event in 1970 when four CHP officers were murdered in less than three minutes during a deadly force encounter. The officers had been trained to place ammunition casings in their pockets during range practice to preclude having to pick them up later. After their death, the officers were found with casings in their pockets indicating they had wasted precious seconds doing so in lieu of reloading. These wasted seconds were the result of inadequate and poor training. Converting to a different weapon system would necessitate unlearning the muscle memory developed from years of training on the current weapon system and developing new muscle memory for a different weapon system.

The following outlines the weapon features considered essential by the WTU and the manufacturers considered during their 2005 evaluation:

Required features

- Stainless steel frame and slide.
- Ambidextrous spring loaded decocking lever.
- Magazine safety disconnect.
- Traditional double action with a short sear reset (1/8").
- Beveled magazine well.
- Rounded trigger guard.
- Bobbed CHP hammer.
- Checkered front and back straps.
- Magazine well relief cut (allows a jammed magazine to be stripped out).

Beretta 92

Pros-

- Stainless steel frame and slide.
- Ambidextrous spring loaded decocking lever.
- Location of ambidextrous spring loaded decocking lever.
- Location of slide stop/release lever.
- Traditional double action.
- Beveled magazine wells.
- Rounded trigger guard.
- Basic checkering front and back straps.

Cons-

- The most noticeable technical feature was the long sear reset with considerable slack in the trigger once the sear had been reset.
- Lack of a magazine safety disconnect.
- Lack of CHP style bobbed hammer.
- Lack of rounded trigger guard.
- Lack of magazine well relief cut (allows a jammed magazine to be stripped out).
- Take down release lever.

Glock

Pros-

- Location of slide stop/release lever.
- Magazine safety disconnect.
- Glock Safe Action (the Glock is a modified striker fired system in which the hammer is partially drawn to a half-cock position and requires the trigger to be pulled in order to cause the hammer to fully retract before it strikes the firing pin).
- Checkered front and back straps.
- Magazine well relief cut (allows a jammed magazine to be stripped out).

Cons-

- Lack of stainless steel frame and slide.
- Lack of ambidextrous spring loaded decocking lever.
- Lack of magazine safety disconnect.
- Lack of a rounded trigger guard.
- Lack of a supported chamber.

Heckler and Kock (HK) Universal Service Pistol (USP)

Pros-

- Ambidextrous spring loaded decocking lever.
- Location of ambidextrous spring loaded decocking lever.
- Location of slide stop/release lever.

- Beveled magazine wells.
- Bobbed hammer.
- Checkered front and back straps.
- Magazine well relief cut (allows a jammed magazine to be stripped out).

Cons-

- Polymer frame.
- Style of magazine release lever causes magazine to be released upon drawing the pistol from the holster.
- Pistol grip is larger than the Smith & Wesson 4006 currently carried.
- The most noticeable technical feature was the long sear reset with considerable slack in the trigger once the sear had been reset.
- Lack of magazine safety disconnect.

Sig Sauer 226

Pros-

- Stainless steel frame and slide.
- Beveled magazine wells.
- Vertical grooves or cuts on front and back straps.

Cons-

- The most noticeable technical feature was the long sear reset with considerable slack in the trigger once the sear had been reset.
- Lack of an ambidextrous decocking lever.
- Lack of a bobbed hammer.
- Location of spring loaded decocking lever.
- Location of slide stop/release lever.
- Lack of magazine safety disconnect.

After the procurement process had begun, SigArms provided a Sig Sauer 226 prototype pistol with a short sear reset.

Smith & Wesson 4006 Tactical Smith & Wesson (TSW)

Pros-

- Stainless steel frame and slide.
- Ambidextrous spring loaded decocking lever.
- Location of ambidextrous spring loaded decocking lever.
- Location of slide stop/release lever.
- Magazine safety disconnect.
- Traditional double action with a short sear reset (1/8").
- Beveled magazine well.
- Rounded trigger guard.
- Bobbed hammer.

- Checkered front and back straps.
- Magazine well relief cut (allows a jammed magazine to be stripped out).

Cons - None.

As articulated, had the Department pursued a new weapon system the intuitive skill necessary for officer survival would have required extensive familiarization and training. A minimum of twenty four (24) hours of weapons training would have been required per officer. This training time estimate was based upon the training course utilized in 1990 when the Department last converted to a new primary weapon. As illustrated on the following page, when all factors are considered, the difference in cost between the SigArms and S&W pistol are substantial.

Items	Quantity	S&W 4006TSW		Sig Sauer P226	
		Cost for one item	Total Cost	Cost for one item	Total Cost
Cost of Pistols	9,736 ¹	\$513 (With trade-in credit)	\$5,337,628.00 (Includes trade-in credit of \$1,312.060)	\$599 (No trade-in credit)	\$5,831,864.00 (Trade-in credit of \$2,693,582 not permitted)
Cost of Dual Magazine Holder for duty belt	7,285 ²	N/A	\$0	\$22.50	\$163,912.50
Cost of Holsters	7,285	\$37.77	\$275,154.45	\$37.77	\$275,154.45
Cost of ammunition for training and familiarization per student (19 cents per round)	7,285	\$9.50 (50 rounds per employee)	\$69,207.50	\$190 (1000 rounds per employee)	\$1,384,150.00
Cost of training Hours for each employee. (Calculations are based upon base pay rates for various ranks)		4 hours	\$1,368,176.00	24 hours	\$8,217,025.00
TOTAL			\$7,050,165.95³		\$15,872,105.95

¹ Represents total weapons purchase

² Total uniformed strength as of June 1, 2006

³ Cost difference of \$8,821,940 between S&W and Sig-Arms pistol purchase

Additionally, the increased training time associated with a new weapon would have resulted in diminished deployment strength while employees were diverted to range training activities. Such extensive training would have been required due to the differences between the S&W 4006 pistol and SigArms pistol (Annex 4). SigArms pistols do not have an ambidextrous spring loaded decocking lever. Additionally, the slide lock/release lever and spring loaded decocking lever are in a different location with a different configuration, there is no magazine release safety and the trigger reset for firing multiple rounds is much longer. Converting to a SigArms pistol would have required the purchase of new magazine pouches and magazines, as well as holsters. The S&W 4006TSW utilizes the same magazines as the current weapon and, therefore, the purchase of new magazine pouches will not be required. Only weapon holsters will be replaced with the purchase of the S&W 4006TSW.

In light of the foregoing, the recommendation made by the WTU was premised upon officer safety, as well as cost savings, while providing officers the most current advances in weapon technology.

In September 2005, the WTU completed their evaluation of the current primary weapon and on January 5, 2006, presented a recommendation to management that reflected the need to replace the S&W 4006 with the current version of the weapon, the 4006TSW (Annex 5). Based on the analysis completed by WTU, age of the existing weapons, and the increase in significant repairs, management approved the sole brand purchase of the S&W 4006TSW once a cost analysis had been conducted to ensure the potential costs were in keeping with sound business practices. The WTU determined cost of the S&W 4006TSW was comparable with similar weapons. Moreover, it was determined the ability of the Department to utilize its current weapon inventory for credit toward the purchase would be restricted to the weapon manufacturer, in accordance with Governor's Executive Order D-7-99 (Annex 6). Controlling the sale of weapons by state agencies and protecting the public from criminals who use weapons that are turned back on the street was the purpose behind the 1999 Executive Order. As a law enforcement agency who deals with armed criminals, the CHP supports the fundamental premise of the Executive Order. The options available to the Department consisted of selling the weapons to the manufacturer, transfer to another law enforcement agency, or destruction. The Department would not consider placing the weapons in the hands of fellow peace officers since it had been determined they were no longer fit for law enforcement duty. Sale to the manufacturer was considered to be appropriate in regards to policy and cost.

Following the initial cost analysis conducted by the Department, sole brand procurement of the S&W 4006TSW began in January 2006. In accordance with state policy, the Academy gunsmiths prepared required specification and quality control procedures for the S&W 4006TSW and the procurement documents were forwarded to the Department of General Services (DGS) in February 2006, for independent review, approval, and preparation of a purchase estimate (Annex 7). During the deliberative process undertaken by DGS it was determined the purchase was in compliance with State Administrative Manual Section 3555 relative to sole brand purchases (Annex 8) and Public Contract Code Section 10334, regulating the sale of firearms by state agencies (Annex 9).

DGS placed the purchase out to bid on March 15, 2006. On March 17, 2006, DGS cancelled the bid after being advised the CHP had received a letter from SigArms requesting that more than one model of pistol be considered (Annex 10). On March 30, 2006, after considering the issues raised by SigArms and obtaining information from CHP, DGS re-released the purchase for public bid (Annex 11). In April 2006, SigArms made an informal protest of the bid by letter to CHP and DGS (Annex 12). Both CHP and DGS responded to the SigArms protest (Annexes 13 and 14). On April 28, 2006, SigArms withdrew the protest in writing. DGS awarded the bid and issued the purchase order on May 10, 2006, to All State Police Equipment. The first shipment of weapons arrived at the Academy on August 1, 2006.

In reviewing the bid process, it was noted the S&W bid totaled \$6,649,688 (Annex 15), while the SigArms bid totaled \$5,831,864 (Annex 16). The SigArms bid included the purchase of the current weapons owned by the Department at a credit of \$2,693,582. Again, the CHP considered the appropriate options relative to disposition of the existing weapon inventory. Considering existing state directive was created to control the disposition of firearms by state agencies and protect the public's interest, the decision to sell the weapons to the manufacturer was the most legally defensible, safest, and cost effective decision. Therefore, the S&W bid was not only the sole compliant bid, but the most cost prudent, especially in light of the additional cost savings associated with training, lost productivity, and related equipment.

Used weapon value is predicated upon Blue Book value similar to a motor vehicle. Blue Book weapon values are graded in percentages, which represent the age and condition of the weapon. It is the opinion of the Academy gunsmiths that the current trade in value of the departmentally issued S&W 4006 pistol is \$150.00. This figure is based on information from the current "Blue Book of Gun Values" and the expertise of the gunsmiths. The S&W 4006 with a 100 percent condition rating has a value of \$686.00. The "Blue Book" lists this pistol with a 65 percent condition rating at a value of \$245.00. Due to the extensive wear of these pistols, it is the opinion of the gunsmiths, based on the "Blue Book" criteria, that the condition rating is 60 percent or less. Most gun shops that sell used guns offer 50 percent of the used trade-in value. Based on this, and the gunsmiths' knowledge of the gun industry, the fair trade-in value of the Department's S&W 4006 is approximately \$150.00.

Specifications prepared by the Department included a requirement for all pistol parts to be provided with a lifetime warranty from the manufacturer, S&W, to include replacement of damaged or broken parts through use. The majority of repairs involving departmental weapons result from normal wear and tear. The submitted S&W bid complies with this requirement, providing free parts for the entire service life of the pistol. The SigArms bid provides a limited warranty which states in part: "[t]his limited warranty is null and void if the firearm has been damaged by accident or has been used in a manner otherwise contrary to instructions found in the Owner's Manual, has been improperly maintained or has had unauthorized repairs or alterations, including of a cosmetic nature. This limited warranty does not apply to normal wear and tear or for consumable items." Had SigArms been awarded the contract their failure to provide a lifetime warranty would have resulted in increased costs to the state.

Since 1990, the CHP has purchased or acquired 9,244 Smith & Wesson model 4006 weapons. During that time, 1,052 retirees (11.4 percent), or roughly 65 a year, have bought the weapon

that served and protected them throughout their careers. California Public Contracts Code Section 10334 provides for retirees of state agencies to purchase their assigned duty weapon from their employer for replacement value or Blue Book, whichever is less. The firearms have sentimental value for peace officers and the CHP has historically allowed for the purchases in accordance with law. Below are the number of handguns purchased for calendar years 2004 and 2005, and year-to-date for 2006.

<u>Year</u>	<u>Number of Handguns</u>	<u>Purchase Price *</u>
2004	70	\$352.86 each
2005	135	\$352.86 each
2006	62	\$354.86 each

* Blue Book value is determined by the age and approximate use of the weapon. Purchase price also includes administrative overhead, such as shipping, handling and refurbishing.

Weapons not purchased by retiring CHP officers are returned to the gunsmith, where they are inspected, refurbished and returned to duty by re-issuing them to cadets. If the weapon exceeds its useful life, it is removed from service and not re-issued.

The sale of weapons to retiring officers represents less than 11 percent of the Department's handgun inventory. The inventory of firearms for distribution to cadets was never a significant factor in the decision to begin replacement of all S&W 4006 pistols. The sale of weapons is obviously a factor in maintaining inventory, however, so are those weapons that become unserviceable. For that reason the CHP has continually adjusted inventory since 1990 when the S&W 4006 was first purchased. Had the significant issue been related solely to inventory, the Department would have simply authorized the purchase of a minimum number of TSW firearms to replenish stock. The decision to replace all S&W firearms with the current TSW version was predicated upon the fact the weapons had reached the end of their life cycle and were demonstrating signs of age in increasing repairs. Peace officers rely upon their equipment to assist in performing their assigned mission and in saving their life or the lives of others. The S&W 4006 had proven to be a highly reliable service weapon for sixteen years and the TSW version was essentially identical to the version purchased in 1990. In fact, the specifications prepared in 1990 for the purchase of the S&W 4006 are virtually identical to the specifications prepared in 2006 for the S&W 4006TSW. The concern for officer safety, the proven reliability of the 4006, and the cost savings associated with purchasing the same firearm were and continue to be the significant decision factors in purchasing the TSW.

Finally, on July 6, 2006, SigArms filed a request for a temporary restraining order (TRO) in Sacramento Superior Court in regards to the purchase of the S&W pistols (Annex 17). The matter was heard on July 13, 2006, and the TRO was denied (Annex 18). On July 24, 2006, SigArms filed a Request for Dismissal with Sacramento Superior Court (Annex 19).

Time Line

- September 2005: The Weapons Training Unit completes a service pistol evaluation.
- January 2006: The WTU submits a memorandum to Assistant Commissioner, Staff recommending purchase of the S&W 4006 TSW pistol.
- January 19, 2006: WTU submits a requisition for the purchase of 9,736 S&W 4006 TSW pistols.
- February 15, 2006: Purchasing receives requisition from the Academy for 9,736 pistols.
- February 16, 2006: Completed purchase estimate of pistols is sent electronically to DGS via Procurement Information Network (PIN).
- February 17, 2006: Assigned to DGS buyer and forwarded to DGS Engineering for specification evaluation.
- February 28, 2006: SigArms submits a price quote for the purchase of their pistols to the WTU. The WTU test fired a SigArms prototype pistol with a shorter trigger reset. SigArms was informed that the requisition for pistols had already been submitted. SigArms was also informed that even with a short trigger reset, their pistols still did not meet the specifications required by CHP.
- March 2, 2006: Commissioner Brown receives a letter from SigArms offering their products.
- March 14, 2006: DGS denies and removes the option for the buy-back program based on Public Contract Code Section 10334.
- March 15, 2006: DGS advertises the solicitation for bid on the pistols with a due date for submittal to DGS before 2:00 PM on April 6, 2006.
- March 17, 2006: DGS cancels the solicitation for bid on the pistols, due to a letter received from SigArms asking that the state consider more than one model. DGS will be reviewing the State Administrative Manual (SAM) section 3555, Specific Brand Justification for the pistols as submitted by CHP.
- March 29, 2006: DGS Director approves CHP's SAM 3555, Sole Brand for the S&W 4006 TSW pistols.
- March 30, 2006: DGS re-advertises the solicitation for bid on the pistols, with a new due date for submittal to DGS before 2:00 PM on April 18, 2006.

April 6, 2006:	Commissioner Brown sends a response to SigArms explaining why the Department will not be pursuing SigArms products.
April 10, 2006:	DGS receives Commissioner Brown's SigArms response.
April 10, 2006:	SigArms sends a statement of concern letter to DGS regarding the specifications of the invitation to bid.
April 18, 2006:	Only two bidders submitted bids; SigArms, who bid their own SigArms model (not to bid specifications) and All State Police Equipment (offering the designated specific brand on the bid, the S&W 4006TSW).
April 19, 2006:	DGS contacted potential bidders, who had not responded to the invitation to bid, and conducted a fair market comparison for price received from the single compliant bidder, All State Police Equipment.
April 26, 2006:	Rejection letter sent to SigArms for bidding their SigArms model which was non-compliant to the requirement of the bid - restricted to the S&W 4006TSW model.
April 28, 2006:	SigArms withdraws their bid protest.
May 10, 2006:	DGS awards the bid and issues the purchase order to All State Police Equipment. Smith & Wesson is currently producing the contracted pistols.
July 6, 2006:	SigArms filed a request for an ex parte application for a temporary restraining order in Sacramento County Superior Court.
July 13, 2006:	Judge Gail D. Ohanesian denied the request for a temporary restraining order and set hearing on the Petition and Complaint for September 22, 2006.
July 24, 2006	SigArms files a dismissal, without prejudice, of their civil action with Sacramento Superior Court.
August 1, 2006:	First shipment of 500 S&W 4006 TSW pistols arrive at the WTU.

2. PERMITTING PROCESS FOR USE OF STATE PROPERTY

When the CHP merged with the California State Police in 1995, the Department assumed responsibility for the issuance of activity permits on state property. The authority for the issuance of such permits is contained within California Government Code (GC) Section 14685. Additionally, Highway Patrol Manual (HPM) 100.70, Safety Services Program (Annex 21), contains policy on the manner CHP employees are to fulfill the requirements of GC Section 14685. In essence, policy states the appropriate local CHP commander shall review a request for use permit submitted for a state facility. Once acted upon by the Area commander the request is then forwarded to the next level of command for concurrence or denial.

On May 29, 2003, former Commissioner D. O. Helmick issued a directive (Annex 20) that modified the foregoing CHP policy. The directive instructed commanders to forward requests for use permits to the Office of Assistant Commissioner, Field for final approval or denial. The intent of the policy modification was to ensure consistency in approval or denial of permits statewide. Prior to the policy modification, concerns had been raised by some permit applicants relative to the consistency of the approval process.

Following the appointment of Commissioner Brown, he requested that the policy be reviewed to determine if the additional level of review remained necessary. His primary concern was weighing the consistency of application review and approval with the requirement to act upon permit applications in an efficient manner. He was also concerned that in accordance with California Code of Regulations Section 1857 appeals were to be made to his office and that serving as both the approving authority and appeal authority may be in conflict. Based on the recommendations of staff, Commissioner Brown issued a directive that local commanders could approve or deny permit applications with the approval of the next level of command without Commissioner level involvement.

In issuing the new directive, an individual within the Office of Assistant Commissioner, Field, included a statement that was inaccurate and not consistent with the policy directive of either former Commissioner Helmick or Commissioner Brown (Annex 22). The statement was contrary to the fact both Commissioners issued directives to ensure a fair, consistent, and timely review of use permits.

On March 22, 2006, Assembly Member Garcia wrote to Secretary of State Bruce McPherson requesting that he provide the CHP with direction regarding the issuance of permits on state property (Annex 23). Secretary McPherson's March 30, 2006, response (Annex 24) referenced the authority granted by Government Code Section 14685 (c)(1) to the CHP to establish regulations regarding the issuance of permits for the use of state property and indicated that he had no authority to issue a directive to the CHP. Those regulations are contained in Title 13 of the California Code of Regulations (Annex 25) and the CHP strictly adheres to those regulations when evaluating a request for a permit to use state property.

3. INVESTIGATIONS REGARDING PERSONNEL ISSUES

Upon the appointment of Commissioner Brown, he requested that SPB review the most recent deputy chief examination to ensure compliance with Article VII of the California Constitution that requires permanent appointments in state civil service be based on merit ascertained by competitive examination. The Commissioner had concerns with the examination process based on information he had received from some participants. In June 2005, SPB staff conducted an audit of the examination to determine whether the selection processes used complied with civil service laws and rules designed to insure compliance with the merit principle.

The merit principle is embodied in the State Civil Service Act and SPB rules that govern the examination process for all civil service positions. The state's selection system is largely decentralized and provides for state departments, under the authority and oversight of SPB, to administer their own selection processes, including initial recruitment and publicity efforts, eligible list establishment, and hiring. CHP has the authority to conduct examinations and make appointments to civil service classifications within CHP.

Appointing powers, such as CHP, and all officers and employees to whom an appointing power delegates appointment authority, are responsible for ensuring adherence to the laws and SPB rules throughout the selection and appointment process. Failure to adhere to the laws and rules renders the state employer vulnerable to charges of improprieties in the selection process and can result in costly challenges, the need to re-administer examinations, and the voiding of illegal appointments. To ensure compliance with the merit principle in the state civil service, SPB may conduct an investigation, in this case at the request of the Department, of the selection process leading to the establishment of an eligible list, and if the examination is found to be conducted improperly, SPB may consider remedial action including, but not limited to, the freezing of an eligible list and ordering a new examination.

On July 18, 2005, SPB met with CHP staff to discuss the final audit report and to address the missing examination materials indicated in the report. At that time, CHP provided SPB with several of the documents that were unavailable when the preliminary report was issued. In addition, on July 25, 2005, CHP sent SPB a memorandum outlining CHP's perspective regarding the examination audit. The SPB August 2005 final report (Annex 28) identified a number of inadequacies in the administration of the examination and invalidated the list because the errors prevented SPB from accurately determined whether each candidate was properly rated. The CHP had made no promotions off the list pending the outcome of the audit and the list was abolished. A new examination for the class of Deputy Chief was subsequently administered to SPB's satisfaction with their oversight and monitoring.

On February 24, 2005, as the result of information from an internal source, Assistant Commissioner K. P. Green, directed the Department's Office of Internal Affairs to conduct an investigation into allegations of potential improprieties relative to the hiring and promotional process. This was limited to the appointment of one Associated Government Program Analyst and a Staff Services Manager I classification, in a Department of over 10,000 employees. These incidents were alleged to have occurred in 2001 and in early 2004. During the month of March 2005, as outlined in the Department's response to the preliminary audit report dated June 13,

2006, (Annex 26), the Department approached SPB and the Department of Personnel Administration (DPA). The purpose was to inform the different control agencies of the investigation and invite their participation since it involved the key staff from the Department's personnel division. It was suggested by one of the control agencies that the Department obtain subject matter assistance from a private firm, Cooperative Personnel Services, which was done. At the conclusion of the investigation, the Department determined acts of misconduct existed and implemented disciplinary action. Furthermore, the Department met with SPB and DPA on November 14, 2005, to provide information that would assist in any inquiry they may conduct. SPB conducted their own investigation into the issue and issued their final report in July 2006 (Annex 27).

As a result of the audit reports prepared in July 2006 and August 2005, the State Personnel Board issued directives concerning the CHP's testing and promotional practices. The CHP has implemented strict management controls to ensure further appointments within the Department are made in compliance with all appropriate laws and implemented an assessment center to ensure fairness and objectivity in the promotional process. The Department believes the issues that warranted SPB review were rare and that personnel practices within the Department meet or exceed policies and standards established by the DPA and SPB.

4. OVERTIME

On June 14, 2006, Chief S. H. Perez provided direction to members of his staff to ensure overtime allotments were utilized appropriately and that any reserves be utilized for the purpose of eliminating backlogs in data entry, filing and other administrative responsibilities. Each CHP Division is allotted an overtime bank for both uniformed and nonuniformed personnel. Overtime surplus is normally held in reserve to address the Department's obligation to respond to emergencies. Near the end of the fiscal cycle commanders may utilize reserve funds to address priority needs, such as a backlog in administrative duties and enforcement details.

On June 14, 2006, the Staff Services Analyst (SSA) from Valley Division sent an email to Division personnel indicating Chief Perez had authorized non-uniformed personnel to work as much overtime as they wanted until June 30 (Annex 29). This email was the SSA's interpretation of the direction from Chief Perez. When Commissioner Brown became aware of the email, he immediately ordered the Office of Internal Affairs to conduct an internal audit of overtime usage by Valley Division. The purpose of the audit is to determine if the overtime was appropriately used and that necessary approvals were provided as required by policy (Annex 30). CHP personnel anticipate the audit will be completed within 120 days and upon conclusion copies will be provided to Business, Transportation and Housing Agency, as well as the Department of Finance for independent review.

It should be noted the Department has two routine sources of overtime for personnel: Regular (CHP-funded) overtime and reimbursable (grant-funded) overtime. Regular CHP overtime is funded by the Motor Vehicle Account and allocated each fiscal year. Regular overtime is closely monitored and used as necessary to accomplish our mission. A portion is typically held in reserve for unforeseen emergencies such as floods, earthquakes, or fires. Remaining overtime

unused for emergencies is normally expended near the end of each fiscal year, to assist in accomplishing the CHP's core missions: enforcing speed, seat belt, and drunk driving laws. As the end of the fiscal year approaches, and no unforeseen emergencies have manifested, Division commands are allowed to expend monies that have been placed in reserve. The increase in allocated overtime hours allows commands the flexibility to utilize support staff and target specific enforcement efforts related to the Departments strategic plan.

Grant-funded overtime for traffic safety projects is allocated by the federal fiscal year (ending September 30). The use of federal overtime grants augments the Departments support staff and enforcement efforts targeting specific identified areas of concern. Expenditures of grant funded overtime projects are tracked and documented with specific timetables for usage. Therefore, with no unforeseen emergencies, an increase in overtime usage is anticipated.

5. STATE RESOURCES (AIRCRAFT)

As the chief representative of the CHP, Commissioner Brown has official duties that require him to attend various functions, oftentimes with other members of his executive office.

Commissioner Brown's May 9, 2006, attendance at the CHP 11-99 Foundation function in Los Angeles was an official duty to represent the Department. As such, use of state transportation to attend the function was authorized by departmental and state policy. On that trip, Commissioner Brown traveled with four members of his executive office who work with the CHP 11-99 Foundation matters, such as line-of-duty deaths and assistance to surviving spouses and children. Commissioner Brown delivered a speech honoring seven fallen officers who lost their lives recently in the line of duty. Since the function was in support of the families of fallen officers, Commissioner Brown felt that it would be meaningful to have his wife travel with him.

The CHP had the state's fiscal discipline in mind when planning logistics to deliver that speech for the CHP 11-99 Foundation. State aircraft was utilized due to the number of employees traveling and the unavailability of commercial flights to return to Sacramento on the same day of the function. Additional costs for lodging would have resulted had state aircraft not been utilized. Moreover, Commissioner Brown voluntarily reimbursed the state for the costs of transporting his wife to accompany him during the speech.